

Tab 17

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Mantian Zhu

Plaintiff
vs.Civil Action No. CL 2009-16778

Dish Network, LLC

Previous Chancery No. CL

Defendant

SERVE:

FRIDAY MOTIONS DAY – PRAECIPE/NOTICE

Moving Party: ☒ Plaintiff ☐ Defendant ☐ OtherTitle of Motion: Motion to Amend Complaint ☒ Attached ☐ Previously FiledDATE TO BE HEARD: July 2, 2010 Time Estimate (combined no more than 30 minutes): 10 minutesTime to be Heard: ☐ 9:00 a.m. with a Judge ☐ 9:00 a.m. without a Judge
☒ 10:00 a.m. (Civil Action Cases) Does this motion require 2 weeks notice? ☒ Yes ☐ No
☐ 11:30 a.m. (DOMESTIC Family Law Cases) Does this motion require 2 weeks notice? ☐ Yes ☐ NoCase continued from: _____ continued to: _____
(Date) (Date)Moving party will use *Court Call* telephonic appearance: ☐ Yes ☐ No

Judge _____ must hear this motion because (check one reason below):

- ☐ The matter is on the docket for presentation of an order reflecting a specific ruling previously made by that Judge.
☐ This Judge has been assigned to this entire case by the Chief Judge; or,
☐ The Judge has advised counsel that all future motions, or this specific motion, should be placed on this Judge's Docket; or,
☐ This matter concerns a demurrer filed in a case where that Judge previously granted a demurrer in favor of demurrant.

PRAECIPE by: A. Charles Dean Gross & Romanick, P.C.
Printed Attorney Name/ Moving Party Name Firm Name3975 University Drive, Suite 410, Fairfax, VA 22030

Address

(703) 273-1400

Tel. No.

(703) 385-9652

Fax No.

74814

VSIF No.

adean@gross.com

E-Mail Address (optional)

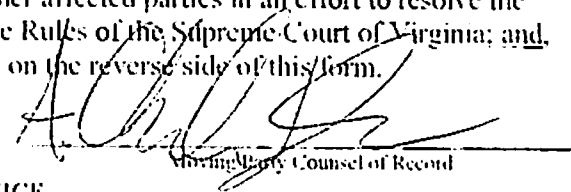
CERTIFICATIONS

I certify that I have in good faith conferred or attempted to confer with other affected parties in an effort to resolve the subject of the motion without Court action, pursuant to Rule 4:15(b) of the Rules of the Supreme Court of Virginia; and, I have read, and complied with, each of the Instructions for Moving Party on the reverse side of this form.

CERTIFICATE OF SERVICE

I certify on the 18th day of June, 2010, a true copy of the foregoing Praecipe was

☒ mailed ☒ faxed ☐ delivered to all counsel of record pursuant to the provisions of Rule 4:15(e) of the Rules of the Supreme Court of Virginia.


 Moving Party Counsel of Record

INSTRUCTIONS FOR MOVING PARTY

DATE/TIME: All motions should be noticed for the 10:00 a.m. Civil Action Docket or the 11:30 a.m. Domestic/Family Law Docket (All Divorce cases, adoptions and Juvenile & Domestic Relations Court Appeals) unless the moving party believes the motion will be uncontested. All motions believed to be uncontested should be noticed for 9:00 a.m. All motions noticed for 9:00 a.m. should be set without a judge, unless evidence will be required (e.g., *In Parte* Proof, Infant Settlements, Fiduciary Matters), or if it is necessary for the order to be entered that morning rather than in chambers at a later time. A **minimum of two weeks' notice is required for all motions for Summary Judgment, Demurrers, Pleas in Bar, motions pertaining to discovery disputes and other motions for which any party desires to file a memorandum.** A memorandum of points and authorities of five pages or less must accompany any of these pleadings and any other motion placed on the Two Week Docket. If either party believes it necessary to file a memorandum exceeding five double-spaced pages, then the parties must utilize the Briefing Schedule procedure: contact opposing counsel or the opposing party and by agreement conduct a telephone conference call with the Calendar Control Judge, (703) 246-2221; or, if agreement is not possible, give advance notice of an appearance before the Calendar Control Judge to establish a Briefing Schedule.

Each side should bring a draft proposed order to Court on the day of the hearing, as the ruling must be reduced to an order that day, **absent leave of Court.** Cases may only be removed from the docket by the Court or by counsel for the moving party or the moving party. One Week Motions may be removed from the docket up until 4:00 p.m. on the Thursday preceding the hearing date, by contacting the Motions Clerk: (703) 246-4355. Two Week Motions may not be continued or removed from the docket after 4:00 p.m. on the Friday preceding the hearing date, without leave granted by the Judge assigned to hear the motion, for good cause shown.

If a hearing on any motion must take longer than thirty (30) minutes, the moving and responding parties, or their counsel, should appear before the Calendar Control Judge to request a hearing for a day other than a Friday. See, "Motions Requiring More than 30 Minutes" in "Friday Motions Docket Procedures" on the Court's website at <http://www.co.fairfaxcounty.gov/courts/circuit/pdf/CCR-F-05>

MOTIONS TO RECONSIDER: Do not set a Motion to Reconsider for a hearing. (See Friday Motions Docket Procedures, available from the Clerk's Office, the Bar Association office or on the Court's website at the address above.

CERTIFICATIONS OF MOVING PARTY/COUNSEL: Rule 4:15(b) of the Rules of the Supreme Court of Virginia provides in pertinent part that "Absent leave of court, and except as provided in paragraph (c) of this Rule, reasonable notice shall be in writing and served at least seven days before the hearing. Counsel of record shall make a reasonable effort to confer before giving notice of a motion to resolve the subject of the motion **and to determine a mutually agreeable hearing date and time.**"

CERTIFICATE OF SERVICE: Pursuant to Rule 4:15 (c), a motions pleading shall be deemed served when it is actually received by, or in the office of, counsel of record through delivery, mailing, or facsimile transmission; not when it is mailed or sent.

INFORMATION FOR MOVING PARTY

COURTCALL TELEPHONIC APPEARANCE: In most cases, Virginia attorneys may appear by phone in lieu of appearing in Court for the hearing. To set up a telephonic appearance, you must call (888) 882-6878. For information, please visit the Court's website at <http://www.fairfaxcounty.gov/courts/circuit/CCR-F-60-70.htm>. The Clerk's Office prefers that you notify it that you have set up a telephonic appearance by calling (703) 246-2880 no later than 4:00 p.m. on Thursday prior to the hearing date. The Court encourages use of this procedure, and either party may appear by phone.

NOTE: Telephonic appearance is only for members of the Virginia State Bar and licensed attorneys allowed to practice *pro hac vice* in the Fairfax County Circuit Court (with a member of the Virginia State Bar present over the phone or in person)

CONCILIATION PROGRAM: The Fairfax Circuit Court strongly encourages use of conciliation procedures to resolve motions. The Fairfax Bar Association's Conciliation Program conducts conciliation without charge by experienced litigators, who meet in person or by telephone with all interested parties. To request conciliation, fax a Request for Conciliation form to the Fax Hotline, (703) 273-1274; e-mail a request for conciliation to: fxconciliation@aol.com; or leave a voice mail message at (703) 627-1228. You will be contacted before the hearing date by a representative of the Conciliation Program.

VIRGINIA:

THE CIRCUIT COURT OF FAIRFAX COUNTY

MANTIAN ZHU

Plaintiff,

V.

DISH NETWORK, L.L.C.

Defendant.

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) **CASE NO. 2009-16778**
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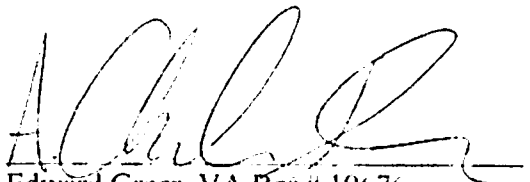
MOTION TO AMEND COMPLAINT

COMES NOW the Plaintiff, Mantian Zhu, by counsel, and moves this court to allow Plaintiff to Amend his Complaint in this matter for the reasons set forth in the accompanying Memorandum in support of this Motion.

Respectfully submitted,

Mantian Zhu
By Counsel

Ma
By



Edward Gross, VA Bar # 19676
Jeffrey S. Romanick, VA Bar # 34761
A. Charles Dean, VA Bar #74814
GROSS & ROMANICK, P.C.
3975 University Drive, Suite 410
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(703) 273-1400 (telephone)
(703) 385-9652 (facsimile)

VIRGINIA:

THE CIRCUIT COURT OF FAIRFAX COUNTY

MANTIAN ZHU

Plaintiff,

V.

DISH NETWORK, LLC

Defendant.

[illegible]

) CASE NO. 2009-16778

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND COMPLAINT

COMES NOW Plaintiff Mantian Zhu (“Zhu”), by counsel, who moves this Honorable Court to enter an Order granting Plaintiff’s Motion to Amend Complaint, and in support thereof states as follows:

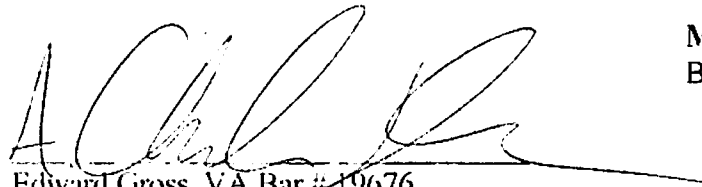
1. On January 22, 2010, Plaintiff filed a Complaint in this *de novo* appeal from the Fairfax County General District Court's Judgment of September 30, 2009.
2. This matter is currently set for trial in the Fairfax County Circuit Court on August 3, 2010.
3. Plaintiff's Complaint in this matter alleges that the Defendant violated the Virginia Telephone Privacy Protection Act by making numerous unsolicited telemarketing calls to the Plaintiff. Since this matter was appealed to the Circuit Court, Plaintiff has been making a diligent effort to obtain records from the phone companies whose telephone number was utilized by the Defendant.
4. Through discovery and the issues of Subpoenas Duces Tecum, Plaintiff has discovered that more telephone solicitation calls were made than Plaintiff initially believed. Consequently, Plaintiff is currently seeking to amend the Complaint to reflect the increased number of calls.

5. Allowing an amendment of the claim will not prejudice the Defendant. Plaintiff's theory of the case remains unchanged. Consequently, this Motion should be granted. *Khan v. Washington*, 74 Va. Cir. 95 (Alexandria 2007).

WHEREFORE, Plaintiff prays that this Court grant leave to allow Plaintiff to amend his claim, file the Complaint attached hereto as Exhibit "A".

Respectfully Submitted

MANTIAN ZHU
By Counsel

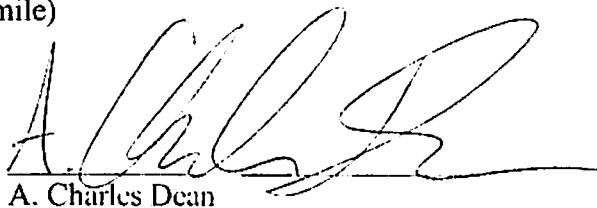


Edward Gross, VA Bar #19676
Jeffrey S. Romanick, VA Bar # 34761
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(703) 273-1400 (telephone)
(703) 385-9652 (facsimile)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was transmitted by facsimile and mailed, postage pre-paid this 18th day of June, 2010 to:

Bradshaw Rost, Esq.
4504 Walsh Street, Suite 200
Chevy Chase, MD
(301) 961-5305 (facsimile)



A. Charles Dean

VIRGINIA:

THE CIRCUIT COURT OF FAIRFAX COUNTY

MANTIAN ZHU

Plaintiff.

v.

DISH NETWORK, LLC

Defendant.

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) **CASE NO. 2009-16778**
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AMENDED COMPLAINT

COMES NOW the Plaintiff Mantian Zhu (“Zhu” or “Plaintiff”), by counsel, and files this Complaint against the Defendant Dish Network, LLC, (“Dish Network”) on the following grounds:

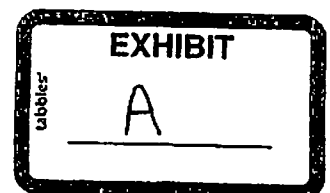
1. Plaintiff Zhu is an individual residing in Virginia.
2. Defendant Dish Network is a Colorado Limited Liability Company authorized to transact business within the Commonwealth of Virginia.

COUNT I

(Violation the Virginia Telephone Privacy Protection Act)

3. On or about May 6, 2009, Plaintiff specifically instructed Defendant not to call his home telephone number (703-281-2885) with solicitations for services from Defendant. Additionally, Defendant registered his home telephone number on the National Do Not Call Registry.

4. Between May 6, 2009 and July 31, 2009, Plaintiff received approximately eighty-nine (89) distinct phone calls from telephone solicitors offering services from Defendant. Upon information and belief, Defendant continues to receive phone calls from telephone solicitors offering services from Defendant.



5. Upon information and belief such calls were initiated or caused to be initiated by Defendant or by an agent of Defendant.

6. Prior to receiving such telephone solicitation calls, Plaintiff had previously informed Defendant that he did not wish to receive telephone solicitation calls made by or on behalf of Defendant.

7. Despite having received communication from Plaintiff that Plaintiff did not wish to receive solicitation calls regarding services from Defendant, Defendant and/or Defendant's agents initiated solicitation calls to Plaintiff or caused solicitation calls to Plaintiff to be initiated.

8. Plaintiff is entitled to recover the sum of \$500 for each solicitation call received in violation of the Plaintiff's express instruction to Defendant to cease solicitation calls.

9. Upon information and belief, each solicitation call received in violation of the Plaintiff's express instruction to Defendant to cease solicitation calls was made willfully.

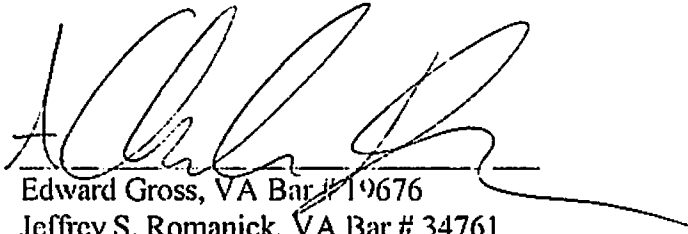
10. Plaintiff is entitled to recover the sum of \$1,500 for each willful solicitation call received in violation of the Plaintiff's express instruction to Defendant to cease solicitation calls.

11. Additionally, Plaintiff is entitled to recover reasonable attorney's fees and court costs.

WHEREFORE, Plaintiff prays for judgment against Defendant in an amount to be proven at trial but no less than the sum of One Hundred Thirty Three Thousand Five Hundred Dollars (\$133,500.00), reasonable attorney's fees and costs expended in prosecuting this action, as well as other and further relief as this Court deems appropriate.

Respectfully Submitted

MANTIAN ZHU
By Counsel

A handwritten signature in black ink, appearing to read 'Edward Gross', is written over a horizontal line.

Edward Gross, VA Bar #19676

Jeffrey S. Romanick, VA Bar # 34761

A. Charles Dean, VA Bar #74814

Gross & Romanick, P.C.

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